

# OPEN MEETING ITEM

**COMMISSIONERS**  
DOUG LITTLE – Interim Chairman  
BOB STUMP  
BOB BURNS  
TOM FORESE



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ARIZONA CORPORATION COMMISSION

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Arizona Corporation Commission  
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DATE: JANUARY 13, 2016

DOCKET NO.: RR-03639A-15-0200

JAN 13 2016

DOCKETED BY

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TO ALL PARTIES:

Enclosed please find the recommendation of Administrative Law Judge Marc E. Stern. The recommendation has been filed in the form of an Opinion and Order on:

UNION PACIFIC RAILROAD COMPANY  
(INSTALL GRADE SEPARATED CROSSING AND REMOVE AT-GRADE  
CROSSING)

Pursuant to A.A.C. R14-3-110(B), you may file exceptions to the recommendation of the Administrative Law Judge by filing an original and thirteen (13) copies of the exceptions with the Commission's Docket Control at the address listed below by **4:00** p.m. on or before:

JANUARY 22, 2016

The enclosed is NOT an order of the Commission, but a recommendation of the Administrative Law Judge to the Commissioners. Consideration of this matter has tentatively been scheduled for the Commission's Open Meeting to be held on:

FEBRUARY 2, 2016 and FEBRUARY 3, 2016

For more information, you may contact Docket Control at (602) 542-3477 or the Hearing Division at (602) 542-4250. For information about the Open Meeting, contact the Executive Director's Office at (602) 542-3931.

*Jodi A. Jerich*  
JODI A. JERICH  
EXECUTIVE DIRECTOR

1200 WEST WASHINGTON STREET; PHOENIX, ARIZONA 85007-2927 / 400 WEST CONGRESS STREET; TUCSON, ARIZONA 85701-1347

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This document is available in alternative formats by contacting Shaylin Bernal, ADA Coordinator, voice phone number 602-542-3931, E-mail [SBernal@azcc.gov](mailto:SBernal@azcc.gov)

1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

2 **COMMISSIONERS**

3 DOUG LITTLE – Interim Chairman  
4 BOB STUMP  
5 BOB BURNS  
6 TOM FORESE  
7 VACANT

8 IN THE MATTER OF THE APPLICATION OF THE  
9 ARIZONA DEPARTMENT OF  
10 TRANSPORTATION TO INSTALL A NEW  
11 GRADE SEPARATED CROSSING AND FOR THE  
12 UNION PACIFIC RAILROAD COMPANY TO  
13 REMOVE AN EXISTING AT-GRADE CROSSING  
14 AT INTERSTATE 10 AND INA ROAD IN THE  
15 CITY OF TUCSON, PIMA COUNTY, ARIZONA,  
16 USDOT NO. 741 101G.

DOCKET NO. RR-03639A-15-0200

DECISION NO. \_\_\_\_\_

**OPINION AND ORDER**

12 DATE OF PROCEDURAL CONFERENCE: August 13, 2015

13 DATE OF HEARING: November 19, 2015

14 PLACE OF HEARING: Phoenix, Arizona

15 ADMINISTRATIVE LAW JUDGE: Marc E. Stern

16 APPEARANCES: Ms. Michelle Burton, Assistant Attorney General,  
17 on behalf of the Arizona Department of  
18 Transportation;

19 Mr. W. Reed Campbell, Beaugureau, Zukowski &  
20 Hancock, P.C., on behalf of the Union Pacific  
21 Railroad Company; and

22 Ms. Bridget Humphrey, Staff Attorney, Legal  
23 Division, on behalf of the Safety Division of the  
24 Arizona Corporation Commission.

25 **BY THE COMMISSION:**

26 On June 17, 2015, the Arizona Department of Transportation (“ADOT”) filed with the Arizona  
27 Corporation Commission (“Commission”) a request for approval for ADOT to install a new grade  
28 separated crossing and for the Union Pacific Railroad Company (“Railroad”) to remove an existing at-  
grade crossing at Interstate 10 (“I-10”) and INA Road in the Town of Marana (“Marana”), Pima  
County, Arizona, at USDOT No. 741 101G (“Application”).

On July 10, 2015, the Commission’s Railroad Safety Section of the Safety Division (“Staff”)

1 filed a request for a procedural conference to address certain concerns of Staff prior to a hearing being  
2 scheduled.

3 On July 17, 2015, by Procedural Order, a procedural conference was scheduled on August 13,  
4 2015.

5 On August 13, 2015, at the procedural conference, ADOT, the Railroad and Staff appeared with  
6 counsel to discuss Staff's concerns and the scheduling of the Application for hearing.

7 On August 14, 2015, by Procedural Order, the hearing on this matter was scheduled to  
8 commence on November 19, 2015, after public notice was provided as directed in the Procedural Order.

9 On August 27, 2015, ADOT filed a Notice of Errata ("Notice") stating that the Application  
10 contained typographical errors that needed to be corrected because the original Application incorrectly  
11 referred to the City of Tucson ("Tucson") as the location of the crossing and should have referred to  
12 Marana. The Notice had a corrected copy of the Application attached to it and then referenced Marana  
13 as the location of the crossing. ADOT's Notice further stated a copy of the corrected Application and  
14 the August 14, 2015, Procedural Order had been provided to Marana.

15 On September 15, 2015, by Procedural Order, the amendments necessary to correct the caption  
16 and other portions of the Procedural Order were made to reflect the changes requested by ADOT.  
17 However, no changes were made with respect to any dates of the scheduled proceeding.

18 On October 23, 2015, Staff filed its Staff Memorandum recommending approval of the  
19 Application.

20 On October 30, 2015, ADOT filed documentation that it had provided public notice of the  
21 proceeding pursuant to the Commission's Procedural Order.

22 On November 19, 2015, a full public hearing was convened before a duly authorized  
23 Administrative Law Judge of the Commission at its offices in Phoenix, Arizona. ADOT, the Railroad  
24 and Staff appeared with counsel. At the conclusion of the hearing, the matter was taken under  
25 advisement pending submission of a Recommended Opinion and Order to the Commission.

26 \* \* \* \* \*

27 Having considered the entire record herein and being fully advised in the premises, the  
28 Commission finds, concludes, and orders that:

**FINDINGS OF FACT**

1  
2 1. On June 17, 2015, ADOT filed an Application for approval for ADOT to construct a  
3 new grade separated crossing at USDOT No. 741 101G and for the Railroad to remove an existing at-  
4 grade crossing at I-10 and Ina Road in Marana, Pima County, Arizona.

5 2. Following a procedural conference, on September 15, 2015, an Amended Procedural  
6 Order was subsequently issued which scheduled a hearing on ADOT's Application on November 19,  
7 2015.

8 3. ADOT's Application is seeking the Commission's approval to construct a grade  
9 separated crossing at Ina Road and I-10 in Marana as part of a larger project which extends from just  
10 east of Ruthrauff Road to just east of Prince Road and where the Railroad's right of way parallels I-  
11 10.<sup>1</sup>

12 4. According to the Staff Memorandum, I-10 will be reconstructed and lowered to ground  
13 level and widened to eight lanes. Ina Road will be elevated to cross over Camino de Oeste, a Marana  
14 Roadway, the Railroad's tracks and I-10. Ina Road will be reconstructed as a six lane roadway with  
15 turn lanes, bicycle lanes and sidewalks. With this configuration, the existing at-grade crossing will be  
16 removed and Ina Road traffic will still have access to I-10. The project will relieve traffic congestion  
17 since all traffic will now pass above the Railroad's tracks on the elevated roadway.

18 5. Pursuant to the Commission's Procedural Order, ADOT provided all interested parties  
19 with notice of the Application and hearing thereon by both U.S. Mail and publication in the Marana  
20 News and the Arizona Daily Star.

21 6. The hearing was held as scheduled on November 19, 2015.

22 7. Mr. Sayeed Hani, the Railroad Liason for ADOT, testified in support of the Application.

23 8. Mr. Hani testified that, with the completion of this project, ADOT will eliminate the  
24 conflict between trains and vehicular traffic at the Ina Road at-grade crossing. (Tr. 6:21-25)

25 9. Mr. Hani further testified that the project is currently funded at a cost of approximately  
26 \$120 million and is scheduled to go into construction sometime in the Spring of 2016 and it will take  
27

28 <sup>1</sup> On September 15, 2011, the Commission issued Decision No. 72593 that approved the construction of a grade separated crossing at Prince Road and the removal of the existing at-grade crossing at that location in Tucson, Arizona.

1 several years to complete the entire project. (Tr. 7)

2 10. According to Mr. Hani, vehicular traffic on Ina Road west of I-10 is approximately  
3 15,000 vehicles per day and vehicular traffic on Ina Road east of I-10 is approximately 31,000 vehicles  
4 per day. (Tr. 8:3-5)

5 11. Mr. Hani further testified that there are schools and hospitals in the area of the Ina Road  
6 at-grade crossing and that approximately 26 school buses per day also utilize this crossing. (Tr. 9:1-  
7 11)

8 12. Mr. Hani testified that ADOT is in agreement with the recommendations contained in  
9 the Staff Memorandum and believes that the upgrade is in the public interest. (Tr. 10:13-19)(Ex. S-1)

10 13. Mr. Hani stated that once the initial stages of construction are completed at the Ina Road  
11 at-grade crossing, the crossing will be closed and the closure will last for the majority of the  
12 construction period with vehicular traffic detoured to other nearby crossings to the north and south of  
13 Ina Road. (Tr. 12)

14 14. Mr. Hani provided a copy of a letter sent to ADOT and signed by the Town Engineer of  
15 Marana that fully supports the construction of the grade separated crossing that will replace the at-  
16 grade crossing at the Railroad's tracks and Ina Road. (Tr. 13)

17 15. Testifying further, Mr. Hani stated that once the overpass project is completed, all of  
18 the signals utilized for the Ina Road at-grade crossing will be removed. (Tr. 15:19-24)

19 16. Mr. Hani stated that the Railroad will contribute approximately \$1.2 million as its share  
20 of the cost of the elevated structure that will be constructed over its tracks. (Tr. 16:8-19)

21 17. Mr. Hani testified further that, following the publication of public notice, ADOT has  
22 not received any objections or any protests to the proposed construction project to replace the Ina Road  
23 at-grade crossing with the grade separated crossing. (Tr. 16-17:24-10)

24 18. According to Mr. Hani, the construction of a grade separated crossing at Ina Road will  
25 reduce the risks associated with an at-grade crossing of the Railroad's tracks. (Tr. 17:11-16)

26 19. Mr. Hani further stated that 48 of the Railroad's trains per day cross the at-grade  
27 crossing at Ina Road presently. However, in 2016, the Railroad estimates that a significant increase in  
28 the number of trains per day will pass through the area where the at-grade crossing will have been

1 previously located. (Tr. 18:1-11)

2 20. Further testifying, Mr. Hani stated that the grade separated crossing will have a new  
3 USDOT No. 441 073C. (Tr. 19:7-10)

4 21. Mr. Hani further stated that whenever construction work on the project takes place  
5 within 25 feet of the Railroad's tracks, as a safety precaution, there will be flagmen present. (Tr. 20:3-  
6 17)

7 22. Mr. Hani further stated that although a final construction agreement had not yet been  
8 completed between the parties, one would be executed shortly and he would provide a copy to the  
9 Commission upon its completion. (Tr. 21:3-9)

10 23. Mr. Chris Watson, the Commission's Assistant Supervisor for the Railroad Safety  
11 Program and its Grade Crossing Inspector, testified that he evaluated ADOT's Application in this  
12 proceeding. (Tr. 22-23:16-2)

13 24. Mr. Watson testified that he had prepared the Staff Memorandum for use in this  
14 proceeding and stated that Staff is recommending approval of the Application by ADOT. (Tr. 23-24:1-  
15 7)

16 25. According to the Staff Memorandum, vehicle safety will be improved with the  
17 improvements planned by ADOT for the crossing. (Ex. S-1)

18 26. Due to the scope of the project, and as requested by ADOT, Staff is recommending that  
19 the Railroad be granted 36 months from the effective date of this Decision to remove the Ina Road at-  
20 grade crossing.

21 27. Mr. Watson further testified that the improvements which will be made by ADOT with  
22 the construction of a grade separated crossing at Ina Road are in the public interest. (Tr. 24:22-24)

23 28. Mr. Watson stated that the construction of the grade separated crossing and the removal  
24 of the at-grade crossing at Ina Road will greatly improve the safety at the crossing. (Tr. 25:13-21)

25 29. Testifying further, Mr. Watson stated that the improvements that are planned at Ina  
26 Road are similar to other Arizona rail crossings which have had grade separated crossings constructed  
27 and at-grade crossings removed. (Tr. 25-26:22-3)

28 ...

1           30. Tucson, Marana, the Federal Highway Administration, the Pima Association of  
2 Governments, ADOT and the Railroad are all helping to fund the project. (Tr. 26:12-16)

3           31. Staff is recommending approval of the Application as requested by ADOT.

4                                   **CONCLUSIONS OF LAW**

5           1. The Commission has jurisdiction over the parties and over the subject matter of the  
6 Application pursuant to Article XV of the Constitution and Arizona Revised Statutes ("A.R.S.") §§  
7 40-336, 40-337, and 40-337.01.

8           2. Notice of the Application was provided in accordance with the law. The removal of the  
9 at-grade crossing and construction of the grade separated crossing at Ina Road in Marana are necessary  
10 for the public's convenience and safety.

11           3. Pursuant to A.R.S. §§ 40-336 and 40-337, the Application should be approved as  
12 recommended by Staff.

13           4. The Railroad should be granted 36 months from the effective date of this Decision in  
14 which to complete the removal of the at-grade crossing at Ina Road.

15           5. After the construction of the grade separated crossing, the Railroad should maintain its  
16 right-of-way beneath the grade separated structure consistent with Arizona Administrative Code  
17 ("A.A.C.") R14-5-104.

18                                   **ORDER**

19           IT IS THEREFORE ORDERED that the Arizona Department of Transportation's Application  
20 as described herein is hereby approved.

21           IT IS FURTHER ORDERED that the Union Pacific Railroad shall complete the removal of the  
22 Ina Road at-grade crossing as described in the Application within 36 months of the effective date of  
23 this Decision.

24           IT IS FURTHER ORDERED that the Union Pacific Railroad shall notify the Commission, in  
25 writing, within 10 days of both the commencement of the construction of the grade separated crossing  
26 and the completion of the removal of the at-grade crossing of Ina Road, pursuant to A.A.C. R14-5-104.

27 ...

28 ...

1 IT IS FURTHER ORDERED that upon the completion of the removal of the at-grade crossing  
2 at Ina Road and the construction of the grade separated structure at Ina Road, the Union Pacific Railroad  
3 shall maintain its right-of-way in compliance with A.A.C. R14-5-104.

4 IT IS FURTHER ORDERED that this Decision shall become effective immediately.

5 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.  
6  
7

8 CHAIRMAN \_\_\_\_\_ COMMISSIONER \_\_\_\_\_

9  
10 COMMISSIONER \_\_\_\_\_ COMMISSIONER \_\_\_\_\_ COMMISSIONER \_\_\_\_\_

11  
12 IN WITNESS WHEREOF, I, JODI JERICH, Executive Director  
13 of the Arizona Corporation Commission, have hereunto set my  
14 hand and caused the official seal of the Commission to be affixed  
15 at the Capitol, in the City of Phoenix, this \_\_\_\_\_ day  
16 of \_\_\_\_\_ 2016.

17 JODI JERICH  
18 EXECUTIVE DIRECTOR

19 DISSENT \_\_\_\_\_

20 DISSENT \_\_\_\_\_  
21 MES:tv(ru)

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SERVICE LIST FOR:

UNION PACIFIC RAILROAD COMPANY

DOCKET NO.:

RR-03639A-15-0200

Alex Popovici, Manager  
Industry & Public Projects  
UNION PACIFIC RAILROAD COMPANY  
631 South 7<sup>th</sup> Street  
Phoenix, AZ 85034-2203

W. Reed Campbell  
BEAUGUREAU, ZUKOWSKI & HANCOCK, P.C.  
302 East Coronado  
Phoenix, AZ 85004  
Attorneys for Union Pacific Railroad Company

James R. Redpath  
Assistant Attorney General  
OFFICE OF THE ATTORNEY GENERAL  
1275 West Washington Street  
Phoenix, Arizona 85007

Sayed M. Hani  
Railroad and Utility Coordinator  
ARIZONA DEPARTMENT  
OF TRANSPORTATION  
205 S. 17<sup>th</sup> Avenue, Room 357 MD 618E  
Phoenix, AZ 85007

City Attorney's Office  
CITY OF TUCSON  
255 W. Alameda Street  
Tucson, AZ 85701

Janice Alward, Chief Counsel  
Legal Division  
ARIZONA CORPORATION COMMISSION  
1200 West Washington Street  
Phoenix, AZ 85007

Brian Lehman, Chief  
Railroad Safety Section of the Safety Division  
ARIZONA CORPORATION COMMISSION  
1200 West Washington Street  
Phoenix, AZ 85007